...m the Court of *Exchequer*, in *Ireland*.

James Cuſack, and *Angelina* his Wife, - - - - - APPELLANTS.

Forde Gilbert, Son, Heir at Law, and Adminiſtrator of *Robert Gilbert*, Nephew and Heir at Law of the Teſtator, *John Forde*, deceaſed, a Proteſtant of the Church of *Ireland* as by Law eſtabliſhed, *Bridget Cuſack* (Daughter of the Appellants), *Francis Darcy*, Eſq; ſecond Son and Adminiſtrator of *John Darcy*, Eſq. deceaſed, and Brother of *Judge Darcy*, alſo deceaſed, who was the eldeſt Son and Heir at Law of the ſaid *John Darcy*, and *Elizabeth Judge Darcy*, (Daughter and Heir at Law of the ſaid *Judge Darcy*), a Minor, by *Suſanna Darcy*, her Mother and Guardian, - - - - - - - RESPONDENTS.

AND

The ſaid *Forde Gilbert*, - - - - - - - - - - APPELLANT.

The ſaid *James Cuſack* and *Angelina* his Wife, *Bridget Cuſack*, *Francis Darcy*, and *Elizabeth Judge Darcy*, - - - - - RESPONDENTS.

CASE of the Reſpondent *Forde Gilbert* in the Original, and of ſaid *Forde Gilbert* in the Croſs Appeal.

...ne, 1746, ...by Robert ...s to part ...is in queſtion. ...d 23d of De- ...749, 18th of ..., 1756, and ...nuary, 1758. ...bruary, 1754, ...ll filed by ſaid ...s to the ...of ſaid lands; ...l was amended ...vember, 1756, ...anuary, 1758, ...of June, 1764, ...arcy a party.

THE ſaid Robert Gilbert filed his bill in the court of Exchequer in Ireland, as to the lands of Ballyronan, Hallsfarm, and Kildea, which bill was amended in 1749, 1756, and 1758; and in 1754 he filed another bill, as to the lands of Teatore, (omitted in the foregoing bills) which he amended 18th of November, 1756, and farther amended 26th of January, 1758, and farther again amended on 29th of June, 1764, and was alſo a bill of revivor upon the death of John Darcy, againſt Judge Darcy his eldeſt ſon and heir at law; wherein the entire ſcope of all the former bills, as alſo all the lands, were taken in, ſo as to have them all comprized in one bill to avoid confuſion; and this bill was on Judge Darcy's death amended 18th of May, 1767, by making the Reſpondent Francis Darcy, as adminiſtrator of his father John Darcy, a party; and again 9th of November, 1767, by making the Reſpondent Elizabeth Judge Darcy, a minor, only child and heir at law of Judge Darcy, a party; which laſt amended bill ſets forth,

(and which laſt amended bill comprized the material parts of all the former bills, and *all* the lands) and on 18th of May, 1767, was further amended, by making the Reſpondent ...—And on 9th of November 1767, was further amended, by making the Reſpondent Elizabeth Judge Darcy a party.

That the ſaid Robert Gilbert's uncle John Forde, of Ballyronan, in the county of Wicklow, gent. deceaſed, was in his life-time a proteſtant of the church of Ireland as by law eſtabliſhed, and was poſſeſſed of and intereſted in the town and lands of Ballyronan and Hallsfarm, by virtue of and under ſeveral leaſes for three lives, and alſo by virtue of a reverſionary leaſe for nine hundred and ninety-nine years, of both the lands, to commence at the expiration of the leaſe for lives, at a certain yearly rent; and was likewiſe ſeized of the town and lands of Kildea, by virtue of a leaſe for three lives, with a covenant of renewal for ever, at a certain yearly rent and fine payable thereout, and alſo of the town and lands of Teatore, otherwiſe Tittour, containing four hundred acres or thereabouts, by virtue of a leaſe for lives, with a covenant of renewal for ever, or having ſome other long and laſting intereſt therein, exceeding thirty-one years.

...ovember 1745, ...edied; having, ...ly, 1745, ...will, and de- ...his leaſes for ...lives and years ...arcy, Eſq. ...Reſpondent ...Darcy, to be ...his debts, &c. ...inted the Ap- ...gelina ſole ...

That John Forde died 18th of November, 1745, having by will, 15th of July preceding, deviſed to John Darcy, (father of Judge Darcy deceaſed, and of the Reſpondent Francis Darcy) his heirs, executors and adminiſtrators reſpectively, all his leaſes for lives and years, to be ſold by him to the beſt advantage, *and thereout to pay all his debts, pecuniary legacies*, and funeral expences, and appointed his niece the Appellant Angelina, *wife of the Appellant* James Cuſack, ſole executrix and reſiduary Legatee, thereby bequeathing her *all his ready money, plate, houſehold goods, debts due to him, and all other his perſonal chattles whatſoever; and declaring that theſe bequeſts were not to be taken as a ſatisfaction or compenſation in any wiſe of or for the debts due by him to her*——That John Forde died unmarried and without iſſue, leaving three ſiſters, Catharine, Ann, and Mary, his heirs at law; Ann married to George Cruiſe, a papiſt, ſince dead, leaving two ſons, Innocent and Ignatius Cruiſe, (always papiſts, and who went abroad to ſome foreign country upwards of twenty years ago, and if living were of ſome religious popiſh order) and a daughter, the Appellant Angelina; Catharine, the eldeſt ſiſter, now dead, married to George Gilbert, leaving William her eldeſt, and the Reſpondent Robert Gilbert her ſecond ſon, which William and his ſon Peter, who were heirs at law to the ſaid Forde, were alſo dead, and the latter leaving the Reſpondent Robert his uncle and heir at law; and Mary, the third ſiſter, quitted this kingdom twenty years ago, and died unmarried and without iſſue; whereby the ſaid Robert Gilbert, and the Appellant Angelina, were the ſole heirs at law of John Forde—That Angelina proved his will, and poſſeſſed herſelf of all his aſſets, to the amount of £. 5000.—That John Darcy, the teſtator's deviſee of his leaſes for lives and years, was a papiſt, who became a proteſtant of the church of Ireland as by law eſtabliſhed; but charged that the truſt was for the uſe and benefit of Angelina and James Cuſack her huſband, and for their children, who were papiſts, *and contrived merely to elude the acts of parliament for the preventing the further growth of popery, and that the debts pretended by the will to be due from Forde to Angelina and the Reſpondent Bridget Cuſack, her daughter, were contrived to load and cover the lands, and by that means the more effectually to elude and evade the acts of parliament made in Ireland to prevent the further growth of popery*—That as an evi-

...ed ſaid will. ...y was a pro- ...ed ſaid deviſe ...s in truſt for ...llants and their ... who were all

as evidence of which trust, John Forde, 26th of October, 1743, executed two bonds, with warrants of attorney, penalty each of £.1600, conditioned for payment of £ 800; one of which bonds was payable to Appellant Angelina, and the other to the Respondent Bridget, her daughter; and on 2d of July, 1745, John Forde executed another bond, with warrant of attorney, of £. 1600 penalty, conditioned for payment of £.800 to said Angelina; and on 9th of July, 1745, he executed a fourth bond, of £. 1600 penalty, conditioned for payment of £. 800 to said Angelina.

dence thereof, Forde, 26th of October, 1743, executed two several bonds, with warrants of attorney for confessing judgment, each of the penalty of £. 1600 conditioned for payment of £. 800 on 26th of October following, one of them payable to Angelina, and the other to Bridget Cusack, her daughter; and executed another bond, 2d of July, 1745, with warrant of attorney of like penalty of £. 1600 conditioned for payment of £. 800 on 2d of July following, to Angelina; and 9th of July, 1745, executed a fourth bond, with warrant of attorney, to Angelina, of £. 1600 penalty, conditioned for payment of £. 800 the 9th of July, 1746; on which 9th of July, 1745, James and Angelina Cusack, caused a lease pretended to be made of the lands as therein after mentioned to Angelina, to be registered in the proper office; and on the 15th of the same July prevailed upon Forde, who was then in a very weak and languishing condition both of body and mind, and not expected to live long, to make the above will; as no other reason could be assigned, why a person born of protestant parents, and always educated in the protestant religion, could be prevailed upon to make such a will, and execute such securities and lease, without any consideration, and to use so many arts and contrivances for evading the said laws, in favour of papists, and in exclusion of his next protestant relations—That judgments had been entered on these several bonds, *though no consideration was paid for any of them*; nor were James, Angelina, and Bridget Cusack in circumstances to afford to lend, or give the testator Forde any sums of money, *nor was Forde in such circumstances as to oblige him to borrow money; or any way indebted* to James, Angelina, and Bridget Cusack, or any of them; on the contrary, he died possessed of ready money, securities, and other effects, to the value of £. 6000, and not only paid the defendants all demands they ever had upon him, but considering them as poor dependant relations, was very bountiful, in entertaining them at his house, and making them presents when they went to visit him—*That the defendants pretended that* Forde *had, some time before his death, made a lease or leases, or an agreement for a lease or leases, of all or the greatest part of the lands, to James and Angelina Cusack, or one of them, for a term of years then in being, which, if ever made, were at less than two thirds of the full improved yearly value, and to commence some day subsequent to the execution thereof, and calculated to intitle Cusack to the said lands only after the testator's death, who had let them to others before the making of this pretended lease or leases to the defendants, and continued in possession thereof by perception of the rents from his said tenants till the time of his death*; nor did James and Angelina Cusack in his life ever receive any rent, benefit, or advantage from their pretended lease or leases, *or paid Forde any rent during his life; but these leases, the above several securities, and the devise to Darcy for turning the real estate into money, were but contrivances for eluding the popish laws; the testator having in money, securities, and other personal effects, more than sufficient to pay all his just debts*—That by two acts of parliament in the 2d and 8th of queen Ann, it is enacted, "That every papist or person professing the popish religion should, from and after the 24th of March, 1703, be disabled to *take*, buy, or purchase, either in his own, or in the name of any other, to his use, or in trust for him, any lands, tenements, or hereditaments, or to take, have, hold, occupy or enjoy any greater interest therein, other than leases not exceeding thirty-one years in possession, and not in reversion, whereon a rent not less than two thirds of the yearly improved value at the time of making such lease should be reserved, *and that all securities whatsoever taken or entered into, to cover, support, secure or make good such lease, purchase, or conveyance, should be void*; and that any protestant might, in any court of law or equity, sue for all such lands and incumbrances conveyed or made to any papist or person professing the popish religion, or *to any other person or persons in trust for him*, her, or them, contrary to these acts"—That the above devise to John Darcy was in trust for Angelina and James Cusack her husband, and the above leases and securities to Angelina and Bridget Cusack were all contrived to protect the lands against the plaintiff, the nephew and heir at law, of Forde a protestant discoverer, who had been always a protestant of the church of Ireland as by law established, and as such insisted under the above acts, *to be intitled to the right, title and interest in the lands devised to Darcy, and to the benefit of the several securities and leases made by Forde to James and Angelina Cusack, as made for the above-mentioned purpose, and at a rent less than two thirds of the full improved value*—That John Darcy, though fully apprized hereof, and that James, Angelina, and Bridget Cusack, their daughter, were all papists, did notwithstanding permit James and Angelina Cusack to hold and enjoy the several leasehold interests so devised to him ever since the testator's death, but farther concealed his will from the plaintiff, and also the leases under which Forde held the said respective interests, refusing to let the plaintiff into possession of the lands, or give him up the will and leases to enable him to sue at law—That the defendants pretended that the defendant *James Cusack had purchased* the other defendant *Bridget's judgment* obtained against said Forde *for a sum of money, and an annuity or certain annual sum during her life, or for a long number of years*; and if so, the plaintiff insisted that the annuity was void as to Bridget, and existed only for his benefit, as the first real protestant discoverer.—The bill therefore prayed that the plaintiff might be decreed as well to the *benefit* of the *devise* so made to John Darcy *in trust*, as of the bequest to Angelina Cusack, and to the *several securities* before mentioned to have been made *for screening and covering the same*; and also to the *benefit of the said lease or leases*, or agreement for a lease or leases, made or pretended to be made by the testator Forde to James and Angelina Cusack, *and to the annuity, as a protestant discoverer under the said acts.*

Judgments were entered on said bonds.

John Forde was not indebted to Appellants, and he died possessed of £. 6000 and upwards.

John Forde made a lease of said lands to the Appellants, at less than two thirds of the full improved yearly value; but continued in possession, and received the rents and profits thereof, till his death.

Said lease and devise were made, and said securities passed, to elude the acts 2 Ann. c. 6. and 8 Ann. c. 3, made in Ireland, against popery.

Said devise to John Darcy, said lease, and said securities, were made and passed to cover said lands from a real protestant discoverer.

Robert Gilbert was always a protestant, and by his bill, founded on said acts, claimed to be intitled as a protestant discoverer under said acts to said securities, and to the said lease, as being at a rent reserved less than two thirds of the improved value.

10th of November, 1746, Appellants answered bill of 12th of June, 1746.

The appellants put in their joint answer to the original bill of 12th of June, 1746, and said, that John Forde, the plaintiff's uncle, was in his life-time, and at his death, possessed of the town and lands of Ballyronan and Hallsfarm, by virtue of two leases, for three lives each, at certain yearly rents, and by a reversionary lease for nine hundred and ninety nine years of both said farms, at a rent to commence on the expiration of the lease for lives—That one of the lives named in the lease of Hallsfarm was living; and did not know whether any of the lives in the lease of Ballyronan were living; but that John Forde, and Sarah his wife, two of the lives in the lease of Ballyronan, were dead, and that George Saville, the other life, was out of the kingdom for many years, and whether he was living or dead could not set forth.—Admitted that Forde was in his life, and at his death, seized of the lands of Kildea, by virtue of a lease for three lives, with a covenant of renewal for ever, under a certain yearly rent and fine—That Forde died at the time, and made such will as charged by the plaintiff, and that Angelina proved his will—That the defendant Darcy was a protestant as by law established; but denied that the devise to him was in trust for, or for the use and benefit of the defendants, or either of them, or for any other papist or person professing the popish religion, or that it was calculated or contrived to elude the popery acts.—Admitted they were papists, but said that the *debts* mentioned in the will to be due to the defendant Angelina from testator were *real*, and not contrived to *elude* the popery acts by incumbering the lands—The defendant Angelina said that George Cruise, her father, was a linen-draper in Dublin, of considerable dealing and circumstances, and married to Forde's sister, and died about 1721, leaving three children, this defendant and two brothers, who went many years since beyond seas, and had not been heard of—That Cruise by his will devised his fortune to this defendant and her two brothers, except a legacy to his wife in case she did not marry, and if she married he devised only £.60 to her, and appointed Joseph Cruise and the said Forde his executors—That Cruise's widow married soon after his death—That Forde was the acting executor, and possessed himself of or disposed of Cruise's effects as he pleased, which were of considerable value, and for which he never accounted—That Forde had a natural son, who had been apprentice to Cruise, and turned out very extravagant, and embezzled considerable sums of Cruise's, which this defendant believed Forde was accountable for, as he had given security for his son's faithful discharge of his duty—That Cruise's children were very young at his death, and Forde not having any legitimate issue, took the defendant Angelina into his care, and kept her many years to take care of his house affairs—The defendant James and she said they were married about 1726, and Forde professing great affection and tenderness for the defendant Angelina, they did not think proper to commence any suit against him for Cruise's effects, believing and hoping that Forde, without trouble, would pay them for defendant Angelina's proportion thereof; and Ford, being several years before his death infirm, and not able to transact or manage his affairs,

Appellants married in 1726.

affairs, employed the defendant James therein, which took him from the merchants buſineſs, his time for the moſt part being employed in Forde's ſervice; and the defendant Angelina, ſeveral years before his death, lived with him, and took care of his buſineſs—That Forde, out of affection for plaintiffs, and for the above reaſons aforeſaid executed to the defendants Angelina and Bridget, the four ſeveral bonds and warrants in the bill; upon the three firſt of which bonds judgments were entered in Forde's life, and all the bonds given as proviſions for the defendant Angelina and her family—Denied that the deviſe to Darcy was in truſt or for the uſe and benefit of the defendants, or either of them, or for either or any of their children—Believed that it was with an intent that the lands ſhould be really ſold, and ſo no breach of the acts, although the defendants and their children were all papiſts, and under the diſabilities and incapacities in bill——Denied that Darcy had, for any of the purpoſes in the bill, permitted the defendants to enjoy the ſeveral leaſehold intereſts deviſed to him ever ſince the teſtator's death, the defendants being in the teſtator's life, and ſince his death, intitled to hold and enjoy them by the leaſe of Forde's, under which they enjoyed in his life and at his death—Denied the concealment of Forde's will or leaſes under which he held the lands, but admitted they refuſed to deliver plaintiff the poſſeſſion of the lands, will or leaſes, being adviſed he had no right thereto——Said that Forde derived all his eſtate, terms and intereſts (except the reverſionary leaſe for nine hundred and ninety-nine years) from and under Sir Richard Kennedy, deceaſed, at £. 2 2s. 10d. ½ yearly for Ballyronan, and Hallsfarm at the yearly rent of £. 6 under the leaſe for lives thereof, and at the yearly rent of £. 9 10s. for both theſe farms under the reverſionary leaſe, which was made by Robert Jones, who became ſeized of the lands; and Kildea, at the yearly rent of £. 20—That the leaſes for lives of Ballyronan commenced 25th of March, 1707, and would determine upon the death of George Saville; and the leaſe of Hallsfarm commenced 25th of March, 1706, and would determine upon the death of George Saville, clerk; and the reverſionary leaſe was to commence on the death of the lives in the reſpective leaſes, or other ſooner determination, and was made for nine hundred and ninety-nine years from thence; and ſaid leaſe of Kildea commenced 15th of April, 1706, and as it was renewable for ever, defendants knew not when it would determine—Said that all theſe leaſes were then in the defendant James's cuſtody; that the witneſſes to the leaſes for lives of Ballyronan were John Ellwood and Thomas Metterick; and to the leaſe for lives of Hallsfarm were Jonas Archer, Anthony Archer, William Hodkinſon, Francis Williams, and Thomas Metterick; and the witneſſes to the reverſionary leaſe were Jane Barker, Elizabeth Barker, and Sarah Barker; and the witneſſes of Kildea leaſe were John Seale, John Ellwood, and Thomas Metterick.

rved rents of the in queſtion.

ary 12th, 1746, Darcy anſwered bill of 12th of June,

John Darcy put in his anſwer to this original bill, admitting Forde's title to the ſeveral lands, and his deviſe thereof to this defendant, as in the bill, but could not ſay whether the deviſe to the defendant was calculated for eluding the popery acts, nor whether the debts mentioned in Forde's will to be due to the defendant Angelina were real, or contrived to load and incumber the lands, being an entire ſtranger to all ſuch contrivances, if any there were—Could not ſay whether Forde's deviſe to this deviſee was in truſt, and for the uſe and benefit of defendant James and Angelina Cuſack, or either of them, or for one of their children, or for what uſe or upon what truſt, than as mentioned in the will; and whether it was or was not warranted by the acts, referred to the court—That he had permitted defendant James to hold the lands under one or more demiſe or demiſes, made to the defendant James of the ſeveral and reſpective leaſehold premiſſes by Forde in his life, for a term of years then unexpired, but was willing to comply with Forde's will in diſpoſing of the ſeveral intereſts thereby deviſed to him, to the uſes and purpoſes thereby, or otherwiſe, as the court ſhould think proper.

of April, 1752, ellants and the Re- dent Bridget an- ed amended bill of of December, 1749.

The Appellants James and Angelina and the Reſpondent Bridget Cuſack put in their anſwer to plaintiffs amended bill of 23d of December, 1749, *admitting there was no conſideration given for all or any of the bonds, ſave as in their former anſwer to the original bill—Believed Forde was in good circumſtances, and not under a neceſſity of borrowing money*—Defendant James ſaid he frequently advanced money for Forde's uſe, which he repaid ſometimes to the defendant, and at other times did not; and defendant James did not keep an exact account of the money ſo lent and advanced to ſaid Forde, becauſe defendant conſidered Forde as a relation from whom this defendant had great hopes of a conſiderable proviſion—Confeſſed that Forde by his bonds, and not otherwiſe, paid defendants all demands which they ever had on him, and was alſo therein very bountiful, conſidering them as relations for whom he had the greateſt regard and affection, and thought himſelf obliged to provide for them—Said that Forde by indenture dated 27th of June, 1745, and then executed as defendants believed, made a leaſe of the lands and premiſſes in bill (among other lands) to defendant Angelina, for thirty-one years, to commence from 25th of March then laſt paſt, at a rent more than two thirds of the then improved yearly value of the demiſed premiſſes; and defendant James before the execution of ſuch leaſe was in poſſeſſion of the premiſſes, and had in Forde's life enjoyed the benefit thereof, under the agreement made with Forde previous to the execution of this leaſe——Denied the leaſe was made to commence on any day ſubſequent to the execution thereof, or calculated to intitle defendants to immediate poſſeſſion after Forde's death, or that Forde continued in the poſſeſſion of the lands until his death, other than that he continued to reſide with defendants in the dwelling-houſe upon the demiſed premiſſes—Said that defendant Bridget, in conſideration of £. 250 and an annuity ſecured to her during her life, aſſigned the judgment obtained by her againſt Forde, to defendant James, who inſiſted he was a purchaſer thereof.

of June, 1745, made by John Forde ppellant Angelina, hirty-one years, to nence from 25th of h then laſt paſt, at t more than two s of the then im- ed yearly value.

of July, 1753, ellants and Reſpond- Bridget Cuſack put eir further anſwers id amended bill of of December, 1749. e of demiſed premi- ncreaſed ſince 1745. e of leaſes in 1745 n to be but £. 80 nnum.

The Appellants James and Angelina, and the Reſpondent Bridget Cuſack, put in their further anſwer to the amended bill of 23d of December, 1749, of the ſame purport as the former anſwer, and admit they gave no conſideration for the bonds, ſave as in their former anſwers, *nor were they able to give any for ſuch large ſums as mentioned in the bonds; and ſaid that all the eſtate, real and perſonal, of Forde, amounted to no more than £. 2615 5s. 4d. and that they made this calculation upon a ſuppoſition that his title was good and clear to all his ſubſtance, and that he died worth no more than about £. 1014 5s. 4d. above his debts, except the debts due to appellants*; defendant James ſaying the value of the demiſed premiſſes was conſiderably encreaſed ſince the year 1745, and believed them worth above the ſeveral rents reſerved thereout to the ſeveral head landlords, and not more.

f November, 1754, Appellants and Re- dent Bridget an- d bill of 19th of uary, 1754.

The Appellants James Cuſack, and Angelina his wife, and Bridget Cuſack, put in their anſwer to the orignal bill of 19th of February, 1754, as to the lands of Teatore, ſetting forth the teſtator Forde's title thereto, under a leaſe for three lives from Sir Richard Kennedy, 13th of February, 1705, and for thirty-one years, to commence after the failure of the lives, at £. 20 yearly rent during the lives, and £. 25 during the thirty-one years; and believed, if the plaintiff was a proteſtant, *he was not proteſtant heir to Forde; and ſaid the lands of Teatore were mountain grounds.*

of January, 1755, Darcy anſwered nal bill of 19th of February, 1754.

John Darcy likewiſe anſwered this bill to the ſame effect as formerly.

of November, 1756, ondent Robert Gil- iled an amended s to part of ſaid and on ſame day

The Reſpondent Robert Gilbert filed an amended bill as to the lands of Ballyronan, Hallsfarm, and Kildea, and the ſame day he filed another bill as to the lands of Teatore, charging that Forde had made a leaſe of theſe ſeveral lands to the defendant Angelina at a rent leſs than two thirds of their yearly value.

filed another bill as to the other part.

of February, 1757, llants and Reſpond- ridget Cuſack an- d ſaid laſt men- d bills.

Each of thoſe bills Appellants and Reſpondent Bridget anſwered, denying the leaſe to be made at leſs than two thirds of the yearly value; but admitted (agreeable to the charge of the bill of Forde's having let ſaid lands to others) that ſaid Forde, on 6th January, 1732, demiſed the lands of Kildea to Henry Metcalf, for the term of twenty-one years, from 25th March 1733.

f November, 1764, llants and Bridget k anſwered amend- l of 26th of Janua- 758, and amended nd bill of revivor of of June, 1764.

The Appellants and Reſpondent Bridget Cuſack likewiſe anſwered the amended bill 26th of January, 1758, and the amended bill and bill of revivor of 29th of June, 1764, to the ſame purport as before, but denying that Forde was procured or prevailed upon by defendants to make his will; on the contrary, believed he made his will freely and voluntarily, without the procurement or perſuaſion of any perſon.

The

The ſaid Gilbert having replied to the ſeveral anſwers, and the Appellants rejoined, and the cauſe being at iſſue, commiſſioners were named for examining witneſſes, and Robert Gilbert examined his witneſſes in the country in September, 1765, at which examination Appellants commiſſioners attended, but examined none on their part, whereupon the commiſſion cloſed; and Robert Gilbert having ſeveral witneſſes to examine before an examiner in Dublin, his witneſſes were accordingly examined in January, 1766, due notice whereof was given to Appellants attorney and agents, and the examination being cloſed, publication paſſed 25th of June, 1766, and the cauſe was ſet down for hearing, viz. 1ſt of July, 1766; but the Appellants, on 22d of July, 176-, moved for a new commiſſion upon pretence of irregularity in the order for publication, which upon full hearing was denied with coſts.

7th of November, 1767, cauſe came on to be heard, but wanted proper parties.
25th of January, 1768, cauſe came on again to be heard.
28th of January, 1768, croſs bill filed by Appellants.

The cauſe being ſet down for hearing, came on accordingly 7th of November, 1767, but for want of formal parties, viz. the repreſentatives of John Darcy, was ordered to ſtand over, and coming on again 25th of January 1768, was partly heard, and ordered to ſtand over till the following Thurſday, 28th of January, 1768, upon which day the defendant James, and Angelina Cuſack his wife, filed a croſs bill againſt the plaintiff, and for evidence as therein mentioned, and 14th of April following, before the Reſpondent Gilbert had anſwered, they amended it, by affixing a new bill, ſetting forth Forde's title to the lands in queſtion, his will, and that previous to the making thereof, viz. 26th of October, 1743, he executed to plaintiff Angelina his bond, with warrant of attorney thereto annexed, in the penalty of £.1600 conditioned for payment of £.800 and intereſt on 26th of October, 1744; upon which bond judgment was obtained in both plaintiffs names, as of Michaelmas term, 1745; and 2d of July, 1745, executed another bond to her, with warrant of attorney, in a like penalty of £.1600 conditioned for payment of £.800 with intereſt on 2d of July, 1746, whereon judgment was obtained as of Michaelmas term; and 9th of July, 1745, executed a third bond to her, with warrant of attorney, in a like penalty of £.1600 conditioned for a like payment of £.800 on 9th of July, 1746, with intereſt; and upon which judgment was obtained as of Michaelmas term aforeſaid—That in ſome time after Forde's death, viz. 19th of June, 1746, the Reſpondent Robert Gilbert, although there was left to him by Forde's will, a legacy of £. 40, greatly exceeding any legacy left to any other relation of the teſtator's except plaintiff Angelina, in concert with John Darcy, and afterwards with Darcy's heir and adminiſtrator, *with a view of covering the teſtator's eſtate from the plaintiffs demands or any legal aſſignment thereof*, had filed his bill againſt plaintiffs, praying to be decreed as a proteſtant diſcoverer to the ſaid ſeveral intereſts and ſecurities, the plaintiffs being papiſts, and therefore diſqualified from taking the bequeſt of the reſidue of Forde's perſonal eſtate, to ariſe after ſale of the ſaid intereſts, and remaining after payment of his debts and legacies—That this bill was four ſeveral times amended, and plaintiffs had anſwered the original and amended bills, and the cauſe was ſtill depending; but neither the ſcope of thoſe bills, nor the relief thereby prayed, were founded in juſtice or agreeable to the ſpirit or deſign of the popiſh laws, but calculated to prevent a ſale of the premiſſes by Darcy, agreeable to the terms and directions of the will, and had ſo far the deſired effect by preventing any perſon's becoming the purchaſer of ſuch intereſts, while ſuch a bill or ſuit was depending relative thereto, and for that purpoſe the ſuit was protracted, and continued undetermined from the year 1746 to that hour—That Robert Gilbert had thus proceeded, although he well knew that plaintiff James was, and for ſome time had been, a proteſtant of the church of Ireland as by law eſtabliſhed, and had for ſeveral years actually been of that religion, but one of his parents having been a papiſt, he was adviſed a regular conformity was neceſſary, and therefore had duly conformed to the eſtabliſhed church, performed the ſeveral requiſites enjoined by law, and obtained and filed proper certificates and atteſtations thereof—That Gilbert had by his bill charged that the ſaid debts were not real, although he knew Forde, excluſive of the ſums in ſuch bonds mentioned, was very conſiderably indebted to plaintiff Angelina; for that George Cruiſe, merchant, deceaſed, Angelina's father, having been in great opulence, and married to a ſiſter of Forde, died in the year 1721, leaving by her plaintiff Angelina, and two other children, which laſt went out of this kingdom forty years ago, and neither of them had been ſince heard of—That Cruiſe had by his will of 11th of January, 1721, bequeathed far the greateſt part of his fortune to Angelina, and thereof appointed Forde and Joſeph Cruiſe executors; but Forde only acted as ſuch, and poſſeſſed himſelf of Cruiſe's effects, to the amount of ſeveral thouſands of pounds, and converted them to his own uſe, without ever accounting for, or paying over one penny thereof—That Forde having had a natural ſon, put him apprentice to Cruiſe, and bound himſelf as ſecurity for his good and honeſt behaviour, but he turning out idle and extravagant, purloined and embezzled his maſter's effects to the amount of ſeveral hundreds of pounds—That Angelina being a minor at her father's deceaſe, Forde took her to his houſe at Ballyronan, where ſhe, from the time ſhe became capable thereof, managed and took care of his domeſtic affairs to his death, and ſhe with his expreſs conſent and approbation married the plaintiff James, who was then a merchant of conſiderable credit in Dublin, but upon his marriage quitted ſuch his buſineſs, and retired to the country, where he, from the year 1727, managed and directed Forde's farms and other affairs, and in courſe thereof actually laid out and advanced for Forde ſeveral ſums of money, to the amount of ſome hundreds of pounds—That Forde by leaſe, 27th of June, 1745, demiſed unto plaintiff Angelina the farm and lands of Kildea, containing one hundred and forty-one acres, the town and lands of Teatore, containing three hundred and fifty acres, and the town and lands of Ballyronan, containing thirty-ſeven acres, and Hallsfarm, containing ſixteen acres, all ſituate in the county of Wicklow, for the term of thirty-one years, to commence from the 25th of March then laſt paſt, at the yearly rent of £.100 ſterling, clear of taxes, which rent did not only actually amount to, but exceed two full third parts of the improved yearly value of the lands, when the demiſe was made—That Gilbert was born of popiſh parents, and never conformed to the church of Ireland, nor performed any of the requiſites preſcribed by the laws, and was therefore incapable of ſuing as a proteſtant diſcoverer, and of holding any intereſt in lands, other than for terms not exceeding thirty-one years, and whereupon a rent not leſs than two thirds of the value ſhould be reſerved at the time of taking ſuch intereſt—That Gilbert had an elder brother, named William, who died ſeveral years ago, leaving a ſon named Peter, which Peter married Hannah Wray, of Dublin, ſpinſter, and had iſſue two children, Catharine and Thomas, that Thomas ſurvived his father, and was ſtill living, and heir at law to Forde—That Forde, ſenſible of his conduct to plaintiff Angelina, and of the great ſervice plaintiffs were to him, always had and declared the greateſt regard and eſteem for them, but being opulent, and plaintiffs unwilling to diſturb him, in hopes of future benefit from him, omitted enforcing the payment of their demands in any adverſary manner; and plaintiffs had lately *diſcovered that Gilbert had filed his ſaid bill in his own name; and not in that of a truſtee or common diſcoverer*, to avoid being called on as a witneſs to diſcloſe the truth of thoſe ſeveral matters he knew from his connections with Forde's family, having been conuſant of the ſeveral facts; wherefore, from the ſtaleneſs of thoſe tranſactions, he then could give moſt material evidence for plaintiffs concerning them; and upon enquiry for proof, they diſcovered his (Gilbert's) acquaintance therewith: The croſs bill therefore prayed an immediate ſale of the teſtator's leaſehold intereſts, purſuant to and for the purpoſes of his will; that an account ſhould be taken of his debts, legacies, and funeral expences; that his creditors reſpectively come in and prove their demands, and the reſidue of ſuch purchaſe money be paid to plaintiff James in right of his wife Angelina; that Francis and Elizabeth Judge Darcy might account for their and Judge Darcy's receipts, and the defendant Robert Gilbert be ſtayed from proceeding in his cauſe until he ſhould fully anſwer and yield the complete diſcovery ſought by this bill; ſo they might avail themſelves thereof on the hearing of that cauſe; and that both cauſes be heard together.

27th of June, 1745, leaſe made by John Forde to Appellant Angelina, of Kildea (141 acres), Teatore (350 acres), Ballyronan (37 acres), and Hallsfarm (16 acres), at the yearly rent of £. 100.

Prayer of croſs bill.

6th of May, 1768, Reſpondent Gilbert anſwered the croſs bill.

The Reſpondent Robert Gilbert by his anſwer, 6th of May, 1768, admitted Forde's title to the ſeveral premiſſes, and the contents of his will; but as to this laſt, ſaid that the plaintiff Angelina, his niece, who always had been a papiſt from her infancy, uſed improper means with, and undue influence over, Forde, when very weak in body and mind, to ſign his name to a paper importing to be his laſt will, whereby he deviſed or ſeemed to deviſe the above mentioned ſeveral intereſts to Darcy for the purpoſes therein, and all his ready money, plate, and houſehold goods, debts, and all other perſonal

perſonal chattles whatſoever, to the plaintiff Angelina, and £. 40 only to defendant; and as evidence of his incapacity, and of his being impoſed upon by plaintiffs and their daughter Bridget, the defendant urged Forde's always having been a proteſtant, this defendant his nephew always a proteſtant, who had never diſobliged, and was allied to him in equal degree with plaintiff Angelina; and yet was prevailed upon by her, who was always a papiſt, born of popiſh parents, and bred her children papiſts, and by her daughter Bridget, a ſhort time before his death, to execute ſuch bonds as in the bill, for which Forde never received any conſideration, nor were the plaintiffs in circumſtances to give him any, but he treated them always as poor relations, keeping them at a diſtance for many years in a cabbin or thatched houſe on a mountainy part of his land till about two years before his death, when being upwards of ninety, and confined to his houſe, and for the moſt part to his bed-chamber, through age and infirmities, and having in great meaſure loſt his ſenſes and memory, the defendant Angelina prevailed upon him to let her continue in his houſe to nurſe him, and manage his domeſtic affairs; and in this his ſtate of dotage and incapacity, the defendants prevailed upon him to ſubſcribe his name to the paper called his will, which they had prepared and drawn for him, without any previous inſtructions of his, and which he never read; and alſo prevailed upon him about the the time in bill, to make a leaſe of all his lands and farms in the county of Wicklow unto Angelina, for thirty-one years, at a very low rent, and leſs than two thirds of the improved yearly value—That the plaintiff concealed Forde's death for ſome days, till, as the defendant had reaſon to believe, his real will was ſuppreſſed, and this pretended will and the bonds ſet up; nor would they, for a conſiderable time before they publiſhed his death, admit any perſon into his preſence but thoſe in colluſion with themſelves, in order the better to accompliſh their deſigns; and Forde, after plaintiffs above-mentioned intruſion into his houſe, upon pretence of taking care of him, and when this defendant was with him upon a viſit, informed him that he had not got any ſatisfactory account of his ſubſtance, from the time the plaintiffs came into his houſe, but applied it to their own uſe, without giving him any account thereof, and complained to defendant of their behaviour to him; from all which circumſtances defendant concluded and believed that they groſsly impoſed upon him—The defendant ſaid, that of the plaintiffs own ſhewing, it appeared that the bonds were either not duly executed by, or at leaſt not fairly obtained from Forde; ſince notwithſtanding their conſiderable amount, and that they are pretended to have been executed in 1743, and in July, 1745, yet judgment was not entered on any of the three ſooner than Michaelmas term, 1745; and it appeared by the rolls, that the judgments were ſeverally entered, two of them 18th of November, and the third the 15th of January, 1745, after Forde's death, which happened 17th of November, 1745—Said that plaintiff James was but a working wool-comber in the liberty of the city of Dublin before he removed to the county of Wicklow, to live upon Forde's bounty and charity—Admitted that his bill had been amended four ſeveral times, and that plaintiffs cauſe was ſtill depending, and ſaid the relief thereby prayed, was founded in juſtice, and agreeable to the ſpirit and deſign of the popiſh laws, in favour of the defendant as firſt proteſtant diſcoverer, and conſequently to prevent a ſale of the premiſſes, inſiſting, as an evidence of the deviſe to Darcy being in truſt for plaintiffs, that neither he nor they ever attempted to diſpoſe of the intereſts, well knowing their intentions to be only by ſetting up the plaintiff Angelina's pretended demands—That his ſuit had been protracted and continued undetermined from the year 1746 by the defendant's low circumſtances, and the plaintiff giving every imaginable delay, as they were doing by this their bill, which was calculated only for farther delay, having lain by ſo long without filing it, and for upwards of twenty years paſt uſed every dilatory delay, and made all the oppoſition in their power, by putting in ſhort and evaſive anſwers, beſides the neceſſary abatements occaſioned by the death of parties—That hence the defendant was unable to proſecute his ſuit with effect, till lately that iſſue had been joined, his witneſſes examined, publication paſſed, and the cauſe ſet down for hearing, and was in the day-paper ſince Trinity term laſt, 1767, and had been called on to be heard in Michaelmas term and Hilary terms laſt; but the plaintiffs procured a week in laſt Hilary term to prepare for the hearing, and in the mean time, about 28th of January laſt, and 14th of April, 1768, filed their original and amended bill againſt the defendant, merely for delay, and to harraſs and perplex him, who is upwards of ſeventy-ſeven years of age—Could not form a belief whether plaintiff James was a proteſtant, or had performed the neceſſary requiſites, but ſaid he was born of popiſh parents, and always to the defendant's knowledge profeſſed himſelf a papiſt, and married a popiſh wife, and educated his children in the popiſh religion—That George Cruiſe (Appellant Angelina's father) was a linen-draper of ſome credit in Dublin, but not in great credit and opulence, and was married to a ſiſter of Forde's, and all his children were papiſts—Did not believe that Cruiſe bequeathed the greateſt part of his fortune to Angelina, or that Forde, as one of his executors, only poſſeſſed himſelf of his effects, or converted them to his own uſe, as charged by the plaintiffs; but had heard that Cruiſe bequeathed £. 1000 or £. 1100, which was the bulk of his fortune, to his wife and children equally between them, and appointed Forde and Joſeph Cruiſe (a relation of Cruiſe) his executors; and believed executors did not act under his will, but ſuffered his widow to poſſeſs herſelf of his effects, for the benefit of herſelf and children, and ſhe afterwards married ſome perſon who embezzled the effects, and ſtripped the children of their proportions, or the greater part thereof, and then left the kingdom—That Forde had a natural ſon, and put him apprentice to Cruiſe, and paid him ſome apprentice fee in money, but never heard nor did he believe that Forde became ſecurity for his ſon's good and honeſt behaviour, or that ſuch was required of him, Forde being the principal ſupport and benefactor of Cruiſe and his family; and after Cruiſe's death, his wife informed the defendant that Forde's ſon had been extravagant, and had ſquandered a great deal of her ſubſtance, but did not mention the amount; and the apprentice himſelf informed the defendant, when he called to ſee defendant, that he never did ſquander, purloin or embezzle any thing like what he was charged with, but that Cruiſe's family had repreſented him in an unfavourable light to his father, in order to prejudice Forde againſt him—Believed plaintiff Angelina was a minor of tender years at her father's death, but denied that Forde her uncle thereupon took her to his houſe at Ballyronan, or that ſhe managed his domeſtic or other affairs to his death, or that with his expreſs conſent or approbation ſhe married the plaintiff James, by the bill ſtiled a merchant; on the contrary, plaintiff Angelina lived with her mother till ſhe married the plaintiff James, a working wool-comber and weaver in Dublin; and Forde was ſo much diſpleaſed with the marriage, that he would not ſee her or permit her to come to his houſe, nor was reconciled to her for ſeveral years after; and as evidence thereof Forde had a ſtep-daughter, named Elizabeth Sherland, who was his houſe-keeper, and always managed his domeſtic affairs till her death, which happened two years before Forde's—Denied the plaintiff James's quitting his buſineſs at Forde's deſire or managing his affairs, and all the charges relative thereto; but ſaid that the plaintiffs having found means, five or ſix years before Forde's death, to ingratiate themſelves, and get him reconciled to them, he placed them in the lands of Teatore, and the ſaid Elizabeth Sherland employed the ſaid plaintiff James to ſell cattle and other articles of Forde's property, a juſt account whereof, ſhe uſed to complain, had not been rendered to her or to Forde; that after her death he took upon him to get what he could from the tenants, and purloined it, without ever giving any account thereof to Forde.—Said that the yearly rent reſerved on the leaſe made to the plaintiff Angelina did not amount to two thirds of the improved yearly value at the time of making ſaid leaſe—That he was not born of popiſh parents, and never performed any of the requiſites preſcribed by the popiſh laws; becauſe he was from his infancy brought up and educated in the proteſtant religion, and had been all his life, and then was, a proteſtant as by law eſtabliſhed, and therefore qualified to hold and enjoy any intereſt whatſoever—Admitted he had an elder brother William, who died ſeveral years ago, leaving a ſon named Peter; but denied that Peter was ever married, or had any legitimate iſſue—Denied the plaintiffs omitting to enforce their pretended demands in any adverſary manner againſt Forde, for the reaſon alledged by them, but from their having no real demand againſt him.—Denied that his filing of a bill in his own name, and not in that of a truſtee, was at all founded on the reaſon given by the plaintiffs avoiding thereby to be examined as a witneſs; but ſaid that he filed it as the firſt proteſtant diſcoverer and heir at law to Forde, merely for the benefit of himſelf and his family, who always had been, and then were, proteſtants as by law eſtabliſhed—The defendant then inſiſted that no ſale of the premiſſes could be directed by the court, until

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the plaintiffs ill-grounded pretence was totally excluded, and after that, for payment of the teſtator's debts and legacies, if neceſſary—Laſtly, The defendant admitted he had ſeen a paper, purporting to be a copy of the biſhop's certificate, dated 14th of December, 1767, above a month after the defendant's original cauſe had come on to hearing, and ordered to ſtand over for want of parties, viz. 7th of November, 1767, of plaintiff James's conformity to the church of Ireland 12th of December before, and another 22d of December, 1767, purporting to be a true copy of an original certificate of the clerk of the peace of the city of Dublin, of plaintiff James's having proved and filed a certificate of his receiving the ſacrament, according to the uſage of the church of Ireland, on Sunday the 13th of December, 1767, and of his having on 17th of ſame December, between the hours of nine and twelve in the forenoon, taken the oaths and ſubſcribed the declaration enjoined by 2d and 8th Ann.

The Appellants having replied in the croſs cauſe, and the Reſpondent Gilbert rejoined, ſeveral witneſſes were examined on the Appellants part, and publication paſſed by order, dated 7th of June, 1768, whereby it was alſo ordered, that the original and croſs cauſes ſhould be heard together.

The Reſpondent Gilbert had examined ſeveral witneſſes in the original cauſe, in the year 1765 and 1766.

The Reverend Richard Chaloner depoſed, That he knew the Reſpondent Gilbert thirty years, being during that time officiating clergyman of the pariſh of Fethard, and ſince deponent's firſt remembrance of Gilbert, he had been and is now a reputed proteſtant, having always attended him in his ſickneſs, and adminiſtered the ſacrament to him therein.

Hugh Gilbert, That the Reſpondent was of the proteſtant religion, and was born of proteſtant parents, and heard and believed was nephew to John Forde, and next proteſtant heir to him.

Dominick Doyle, That he knew and has been well acquainted with the Appellants James Cuſack, Angelina his wife, and Bridget Cuſack, for upwards of twenty-four years paſt, and knew and was well acquainted with John Forde, for about ſeven or eight years before his death, having been a ſervant to the ſaid John Forde at the time, and for about three years immediately before his death; and that James Cuſack and Angelina his wife alſo lived in Forde's houſe with him for upwards of twelve months next before his death, and that during the reſpective times the Appellants lived in Forde's houſe they were conſidered by the deponent and by Forde's neighbours as poor relations of his—*That the houſe and furniture were Forde's property, and the houſe and family ſupported and maintained for three years next before his death, at his expence, the deponent having for ſo long lived therein as his ſervant*—That during all the time deponent lived as ſervant with Forde, he was poſſeſſed of the towns and lands of Ballyronan, Hallsfarm, Kildea, and Teatore; and always heard and believed, and ſtill believes, that he held thoſe lands by virtue of long leaſes, and knew the lands of Ballyronan, Hallsfarm, Kildea and Teatore theſe forty years, of all which Forde was poſſeſſed at the time of his death—That immediately before James Cuſack and Angelina his wife came to live in Forde's houſe, they lived upon part of the lands of Teatore by Forde's permiſſion—Knew not whether Forde did demiſe any part of ſaid lands to James Cuſack at a rent, or whether he made a preſent of ſuch part of Teatore as he held—*That Forde and the tenants deriving under him was or were in poſſeſſion of Ballyronan, Hallsfarm, Kildea, and Teatore, and in receipt of the rents, iſſues, and profits thereof, until and at the time of Forde's death*—That ever ſince deponent firſt knew theſe lands, which is upwards of forty years, the lands of Ballyronan were computed and deemed in the neighbourhood thereof to contain forty acres, thoſe of Hallsfarm thirty acres, and thoſe of Teatore four hundred acres, and believes the ſeveral laſt mentioned lands do reſpectively contain the quantities herein before-mentioned—That the lands of Ballyronan and Hallsfarm were at Forde's death, if let to a ſolvent tenant or tenants reſpectively, worth twenty-five ſhillings an acre yearly, one year with another; and thoſe of Teatore were then reaſonably worth, to be let as aforeſaid, four ſhillings an acre yearly—That he then heard, which he believes to be true, that the lands of Kildea were well worth upwards of £.40 yearly, but was not ſo well acquainted with Kildea as with the other lands—That the Appellants and the Reſpondent Bridget reſpectively lived *in Forde's houſe* at and for a conſiderable time before his death—That they nor any of them was or were then deemed or reputed to be poſſeſſed of any large or other independant fortune or fortunes; on the contrary, they were deemed and reputed to be poor relations of Forde's, whoſe principal dependance was upon him, and were conſidered in that light in his neighbourhood; and that the Appellants and Reſpondent Bridget Cuſack, at and for a conſiderable time immediately before Forde's death, *had the greateſt aſcendancy and influence over him*, and did what they pleaſed in his houſe and upon his lands—That for three days after Forde died, James and Angelina his wife, and Bridget, *concealed his death from his neighbours*, and pretended he could not be ſeen, for that he had taken phyſic, and that at the end of thoſe three days deponent ſaid to Angelina Cuſack that the bell ſhould be rung for this deponent's maſter, meaning Forde, to which ſhe anſwered, that the deponent might then go and get it rung; and deponent then ſaid that it ought to have been rung long before, or to that effect; to which the ſaid Angelina replied, *hold your tongue, and go about what I bid you do*, or to that effect—That it was always deemed and reputed in Forde's neighbourhood, which the deponent believes to be true, that Forde, at and immediately before his death, was poſſeſſed of banker's caſh notes, ready money, and other ſecurities for money, ſtock of cattle, houſhold goods, and other effects, amounting in value to five or £. 6000 ſterling, or upwards; and that during all the time the deponent knew Forde, he was deemed and reputed to be a man of wealth, and believed he was ſo, in regard the deponent, in company with Forde, has brought ſeveral bags of money ſealed to Dublin, to be put into a bank, as deponent underſtood and ſtill believes—That Forde was never deemed to be in ſuch indigent circumſtances as to be obliged to borrow money from any perſon, for that on the contrary he often lent money at intereſt to others; *and that the Appellants or any of them never was or were, in Forde's life, deemed or reputed to be in ſuch affluence as to be able to lend him any money whatſoever*; but on the contrary James Cuſack, very ſhortly before Forde's death, *ſeveral times borrowed ſmall ſums of money from him to buy wool, and that the Appellants were always conſidered as dependants upon Forde.*

Martin Malone, That he knew and was well acquainted with John Forde from this deponent's childhood until his death—That for upwards of twelve months before Forde's death the Appellants lived in his houſe, and were conſidered as his poor relations—That the Appellant James Cuſack acted as ſteward or manager under him——*That the houſe and furniture were Forde's own property, and the houſe ſupported at his own expence, until his death*——Always underſtood and believed, and ſtill believes, it was ſo underſtood by Forde's neighbours—That Forde was before and at the time of his death poſſeſſed of the lands of Ballyronan, Hallsfarm, Kildea, and Teatore, by virtue of long leaſes, as deponent always heard and believes—That before James Cuſack and Angelina his wife went to live with him, they lived for ſome time on part of the lands of Teatore, and believes Forde had let or demiſed the part of Teatore aforeſaid, ſo held by James Cuſack, to him, but at what rent knows not—That the lands of Ballyronan and Hallsfarm were reputed to contain, and deponent believes do contain, ſeventy-two acres, Kildea one hundred and forty, and Teatore four hundred—Believes Ballyronan and Hallsfarm were at Forde's death reaſonably worth, to be let to a ſolvent tenant or tenants, at leaſt twenty-five ſhillings an acre yearly—That ſeveral years before Forde's death he let the lands of Kildea for twenty-one years, to one Henry Medcalfe, at £. 56 yearly, as deponent was informed by Forde and Medcalfe, which deponent believes to be true, having heard the leaſe read—That at Forde's death the lands of Teatore were reaſonably worth five ſhillings an acre yearly, deponent having been then well acquainted with all the ſaid lands——*That at Forde's death the Appellants lived in his houſe at Ballyronan*——Never heard, nor does he believe, the Appellants, or any of them, were or was poſſeſſed of any large or independent fortune or fortunes, for they were always conſidered as poor relations of Forde's, and depending upon him; that they were active perſons, *and had the greateſt, if not the only aſcendancy over Forde*, at and for a conſiderable time before his death—That Forde being upwards of ninety years old, as deponent believes, he was very weak both in body and underſtanding,

underſtanding, and very helpleſs for ſome time before his death; and the Appellants would not ſuffer any perſon but whom they pleaſed to come to or ſpeak with him.

, and 12th of r, 1768, original cauſe heard.

The original and croſs cauſe were heard together 9th, 10th, and 12th of November, 1768, on the firſt of which days the Appellants counſel offered to read the depoſitions taken for them in the croſs cauſe, but the court, on reading the order of 26th of June, 1766, for publication abſolute in the original cauſe, and the order of 22d of July, 1767, when the Appellants motion for a new commiſſion, after publication in the original cauſe, was refuſed with coſts, would not permit the depoſitions taken in the croſs cauſe to be read; upon which *the Appellant's counſel would not proceed further in the hearing of the croſs cauſe:* the hearing, however, is mentioned in the minutes to be in both cauſes, and the decree is made up accordingly—And on the ſaid 12th of November, 1768, the court decreed, that the Reſpondent Robert Gilbert was intitled from the time of filing his amended bill as a proteſtant diſcoverer, and under and by virtue of the ſeveral acts of parliament for preventing the growth of popery, to the benefit of the leaſe made by John Forde to the Appellant Angelina Cuſack, bearing date 27th of June, 1745, for the term of thirty-one years from the 25th of March preceding, and to the full benefit of the lands thereby demiſed to her, and that an injunction ſhould iſſue to the ſheriff of the county of Wicklow, to put the Reſpondent Robert Gilbert, or his aſſigns, into the quiet, actual, and peaceable poſſeſſion of ſaid ſeveral lands and premiſſes with their appurtenances, and to eſtabliſh him and them, from time to time, as occaſion ſhould require; and further, that it ſhould be referred to the chief remembrancer, or his deputy, to audit and ſtate an account of the clear yearly iſſues and profits of all and ſingular the ſaid ſeveral lands and premiſſes in the ſaid leaſe mentioned, from the time of filing the Reſpondent Robert Gilbert's amended bill; and that on the return of the chief remembrancer or his deputy's report, ſuch further order ſhould be made as would be fit and proper, &c.

An injunction accordingly iſſued ſoon after to the ſheriff, and the Reſpondent Gilbert was put into poſſeſſion, and ſtill continues in poſſeſſion, of ſaid ſeveral lands and premiſſes.

November, 1768, nts petition for ring.

November, 1768, -heard, and de- rmed.

The Appellants, 14th of November, 1768, petitioned the court for a re-hearing, which was accordingly had 23d of November, 1768, when it was ordered, that the former decree ſhould be affirmed, and that the Reſpondent Robert Gilbert's bill, ſo far as it ſought to be decreed to the original leaſes made to John Forde, and the ſeveral ſecurities in the pleadings mentioned, ſhould be diſmiſſed.

From both which decrees of 12th and 23d of November, 1768, the Appellants have appealed to your Lordſhips, though they acquieſced under ſaid decrees for above *fourteen months*, not having preſented their Appeal till 24th of January, 1770. Robert Gilbert did alſo appeal in his life-time from ſuch part of the ſaid decree of 23d of November, 1768, as directs his bill to be diſmiſſed ſo far as it ſought to be decreed to the original leaſes made to John Forde,

ch, 1771, Gilbert died.

and the ſeveral ſecurities in the pleadings mentioned: But he dying 10 March, 1771, the Appeals thereby abated, and the preſent Reſpondent Forde Gilbert his ſon and adminiſtrator, upon being ſerved with your Lordſhips order for reviving and anſwering the originalAppeal, put in the following ſpecial anſwer: "This Reſpondent ſaith for plea that the ſaid Robert Gilbert his father died in the month of March, 1771, and that the ſaid decrees and orders appealed from were made and pronounced the 12th and 23d days of November, 1768, and that the ſaid petition and appeal was not brought into this Honourable Houſe until the 24th day of January, 1770; but this Reſpondent ſaith, that *after* the time the ſaid decrees and orders were made and pronounced as aforeſaid, and *before* the time the ſaid petition and appeal were brought into this Honourable Houſe, namely, in March, 1769, the ſaid Robert Gilbert conveyed or ſold, for a valuable conſideration, all his right, title and intereſt in the ſaid decrees and orders appealed from: And this Reſpondent ſaith, he hath not aſſets ſufficient to ſatisfy all his ſaid father Robert Gilbert's juſt debts and funeral expences."

The Reſpondent Gilbert therefore humbly hopes, that the decree of 12th of November, 1768, will be affirmed with coſts; and that ſuch part of the decree of 23d of November, 1768, as directs his bill to be diſmiſſed ſo far as it ſought to be decreed to the original leaſes made to John Forde, and the ſeveral ſecurities in the pleadings mentioned, will be reverſed, for the following (among other)

REASONS.

I. The ſale or conveyance made by Robert Gilbert for a valuable conſideration in March, 1769, of all his right, title, and intereſt in the above decrees of 12 and 23 November, 1768, above *three months* after the decrees appealed from were pronounced, and near *eleven months* before the Appellants preſented their appeal, 24 January, 1770, is an abſolute bar to ſuch appeal; elſe no perſon purchaſing under a decree can ever be ſafe while there is a *poſſibility* of ſuch decree's being appealed from.

II. The lands leaſed by Forde to the Appellant Angelina Cuſack are proved by two witneſſes to be let at leſs than two thirds of the improved value, if leaſed to a ſolvent tenant; for by the evidence they appear to be worth above £. 200 yearly, and the rent reſerved was only £. 100—The Appellant Angelina is allowedly a papiſt, and the Reſpondent Gilbert is proved to be a proteſtant, and born of proteſtant parents. His right therefore to this leaſe, as firſt proteſtant diſcoverer, is by the acts 2d and 8th *Ann*, clear and undeniable.

III. The examination of witneſſes by the Appellants in the croſs cauſe, after publication had paſſed ſo long before in the original cauſe, not only without leave of the court, but after an expreſs refuſal, was an abſolute nullity, and the depoſitions taken on that occaſion were very juſtly rejected by the court. None of them therefore can be made uſe of to contradict the teſtimony of the Reſpondent Gilbert's witneſſes as to the yearly value of the lands, ſo as to lay a foundation for directing an iſſue to try ſuch value. Indeed, the directing ſuch iſſue *now* would be as great an inlet to perjury as would have been the granting a new commiſſion in July, 1767, after publication paſſed in the original cauſe. *And the other charge of the leaſe's being made merely for ſecuring poſſeſſion to the Appellants immediately upon Forde's death, is proved to a demonſtration by Forde's continuing in poſſeſſion until his laſt moment, of the houſe and lands in queſtion.* Beſides, the order of 22d July, 1767, refuſing the new commiſſion, and on which the decree was grounded, being not appealed from, is *now* concluſive.

IV. The Appellants have admitted by their anſwer, that they never gave any conſideration for the ſecurities executed to them by Forde. Indeed they were not able to give any. Forde is proved to have conſidered them in the light only of poor relations, whoſe chief dependance was upon him, and to have at ſeveral times lent the Appellant James Cuſack ſmall ſums to enable him to buy wool.—That for a conſiderable time before his death, and after their prevailing upon him to let them live in his houſe, they, in his ſtate of dotage, gained ſuch aſcendancy and influence over him, that he did what they pleaſed.—Then it was that they obtained the bonds in queſtion, for giving a colour if poſſible to the leaſe, but for ſecuring to themſelves at all events a good part of his effects, which are proved to have amounted, at and immediately before his death, in bankers caſh-notes, ready money, and ſecurities for money, ſtock of cattle, houſhold goods, and other effects, to between £. 5000 and £. 6000, he being no more in want of borrowing from any body, and particularly from the Appellants, than they were in a capacity of lending; and hence it is eaſy to gueſs why they concealed his death for three days from all the neighbourhood, the whole being a ſeries of fraudulent tranſactions to prejudice the Reſpondent Gilbert, Forde's next proteſtant heir.

V. This

Cuſack, and Wife, - - APPELLANTS.
Gilbert, and Others, - RESPONDENTS.

Et è contra,

CASE of the Reſpondent *Gilbert* in the Original, and of ſaid *Gilbert* in the Croſs Appeal.

To be Heard at the Bar of the HOUSE of LORDS;
on the Day of 1773.

(8)

V. This ſeries of fraud, and of the ſettled intent to evade the popery laws, appears as well upon the face of the will made for Forde, as from the truſtees and ceſtuique truſt's ſubſequent conduct. The Reſpondent, ſays, *the will made for Forde*, as it is dated 15th of July, 1745, when he is proved to be ninety-two years old, and in a ſtate of the greateſt debility of mind and body; he thereby bequeaths all his leaſehold intereſts for lives and years to Darcy, in truſt to ſell them, and thereout to pay his debts, legacies, nay, even his funeral expences; and then he makes the Appellant Angelina ſole executrix and reſiduary legatee, with an expreſs declaration that ſuch legacy is meant over and above the debts due by him to her. How thoſe debts came to exiſt is proved above. The teſtator died in November, 1745, four months after this will; and though debts, legacies, and funeral expences required immediate ſatisfaction, the truſt remains unexecuted at the end of twenty-five years; no lands are ſold, but the Appellants have all along remained in perception of the rents and profits, by the connivance of the truſtee and his repreſentatives. There cannot ſurely be ſtronger evidence of this truſt in Darcy being a mere ſham, and only calculated for ſecuring the papiſt ceſtuique truſt, the enjoyment of theſe leaſehold intereſts, in direct oppoſition to the popery acts; no creditor, legatee, or undertaker having ever appeared, to compel an execution of the truſt. In fact there was no creditor but the Appellants, and only a few trifling legacies, whereof that of £.40 to the late Reſpondent Gilbert was the principal.

E. THURLOW.
AL. FORRESTER.

Die Lunæ 25° Januarij 1773

Ordered and Adjudged that the Original Appeal be Dismiſſed and the Decree therein Complained of Affirmed. And it is further Ordered that the Croſs Appeal be Dismiſſed the Appellants having waited by the Death of Robert Gilbert the Original Appellant in the Croſs Appeal.